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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

GIUSEPPE ROMEO,

Defendant and Appellant.

H045444

(Santa Clara County

Super. Ct. No. C1526726)

Defendant Giuseppe Romeo was found not guilty by reason of insanity after he committed an assault with a deadly weapon, in violation of Penal Code section 245, subdivision (a)(1).<sup>1</sup> On appeal, he seeks review of the resulting order committing him to the Department of State Hospitals. Having reviewing the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we find no error and affirm.

Defendant was initially charged by felony complaint in December 2015 with second degree robbery (§§ 211, 212.5, subd. (c)), assault with a deadly weapon (§ 245, subd. (a)(1)), and making a criminal threat. (§ 422.) The charges arose from defendant's taking a pack of cigarettes outside a liquor store. When confronted by Jesus Fernandez, the store owner, for leaving the store without paying, defendant threatened to kill Fernandez and struck him on the head with a lantern or glass bottle, causing sustained injuries.

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<sup>1</sup> All further statutory references are to the Penal Code.

In March 2016 defense counsel raised a concern regarding defendant's mental health and requested an evaluation to help determine whether defendant should plead not guilty by reason of insanity or present a defense based on "mental or emotional condition." The proceedings were subsequently continued pending determination of defendant's competency. In August 2016, having received a report from Brent Hughey, Ph.D., the appointed neuropsychologist, the court found defendant incompetent to stand trial and committed him to the Department of State Hospitals for care and treatment under section 1370, subdivision (a)(2).

On April 19, 2017, after defendant was deemed restored to competency, the court held a preliminary hearing. It received testimony from the responding police officer, the victim, and a second neuropsychologist, Ashley Cohen, Ph.D., who had also examined defendant and diagnosed him with schizophrenia. At the conclusion of the hearing the court held defendant to answer only on count 3, assault with a deadly weapon.

On June 14, 2017, current defense counsel, Carlie Ware, again declared a doubt regarding defendant's competency. Although he had been restored to competency based on the absence of delusions, defendant now appeared to be "operating out of a delusion that the man who worked in the store, who is the alleged victim in our underlying case, was attempting to rape him and sexually batter him by touching him in his private, genital area." In Ware's opinion, defendant's "fixed belief" in this delusion was "affecting his ability to understand the charges in this case and his options, and is making him unable to rationally assist me, his counsel." Ware further noted that she believed that defendant should consider accepting the prosecutor's plea offer to a "non-strike" assault under section 245, subdivision (a)(4). Defendant, however, was unwilling to consider either that option or a plea of not guilty by reason of insanity; he insisted that he wanted to go to trial and "fight this case to a jury." The court then held a closed hearing to consider the matter.

After the hearing, the sealed transcript of which we have reviewed on appeal, defendant stated on the record that he had changed his mind and now wished to enter a “dual plea” of not guilty and not guilty by reason of insanity. During the colloquy with the court, defendant affirmed that he understood the nature, process, and potential consequences of such a plea. The court then rejected Ware’s declaration of doubt and entered the dual plea to the information. Dr. Robert Perez and Dr. Leonard J. Donk were appointed to conduct examinations before trial.

On July 17, 2017 the defense moved to dismiss count 2, the criminal threats charge, for insufficient evidence. On August 8, 2017, the court granted the motion over the People’s opposition.

On October 12, 2017, both parties waived a jury, and the matter was tried by the court. The evidence included the transcripts and exhibits from the preliminary hearing and photographs from the police investigation. Defendant also testified, asserting that he paid for the pack of cigarettes. While still inside the store, Fernandez touched defendant’s “crotch.” Defendant ran outside, but Fernandez exposed his genitals to him. When defendant ran away to the Auto Zone store, Fernandez grabbed him, punched him in the head, and kicked him. He was only trying to defend himself when he hit Fernandez with the lantern.

In closing argument Ware urged the court to find that defendant was acting in self-defense, in an effort to stop what he “honestly believed” was a sexual assault. The prosecutor maintained that such a belief was not reasonable. The court found defendant guilty of violating section 245, subdivision (a)(1).

The insanity phase of trial took place four days later. The court had before it the reports from the appointed psychologists, both of whom had concluded that defendant was legally insane at the time of the offense. The court found that Ware had established the elements of the defense, and it therefore found defendant not guilty by reason of insanity. The court further found that defendant currently did not appear to have

recovered his sanity; accordingly, it referred the matter to both the probation department and the South Bay Conditional Release Program (CONREP) for evaluation. On December 4, 2017, the court ordered defendant committed to the Department of State Hospitals for treatment, pursuant to section 1026. Defendant's credits were calculated at 1,321 days, for a total term of four years. Defendant then filed this timely appeal.

Appointed appellate counsel has filed an opening brief that states the case and the facts but raises no issues. Defendant was notified of his right to submit written argument on his own behalf but has not availed himself of the opportunity. Pursuant to *People v. Wende, supra*, 25 Cal.3d 436, we have reviewed the entire record and have concluded that there are no arguable issues on appeal.

The order is affirmed.

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ELIA, J.

WE CONCUR:

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GREENWOOD, P. J.

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PREMO, J.